vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.407 OF 2002

Krishna Chango Vavare
Convict No.C/11984
presently lodged at
Yerawada Central Prison
Pune, Maharashtra ... Appellant

V/s.

The State of Maharashtra ... Respondent

Mr.D.G. Khamkar for Appellant
Mr.D.R. More, APP, for Respondent

CORAM: **V.G. PALSHIKAR, Ag. C.J. & SMT.NISHITA MHATRE, J.**

DATED: **AUGUST 24, 2006**

ORAL JUDGMENT (PER SMT.MHATRE, J.):

. This appeal has been preferred against the conviction under section 302 of the Indian Penal code and the sentence for life imprisonment. The appellant has also been convicted and sentenced for two years' rigorous imprisonment for the offence under section 452 of the Indian Penal Code.

2. The case of the prosecution is that the accused, Krishna entered the house of the deceased, Vilas who was his brother in law and attacked him with a sword. Vilas succumbed to the injuries sustained by him on the neck. The incident occurred around midnight of 21.6.1998. It was reported to the police the next morning that is on 22.6.1998 and a case was registered against the accused. The Postmortem examination was conducted and report indicates that the probable cause of death was due to

haemorrhagic shock on account of the injury sustained by the deceased. The inquest panchanama and spot panchanama were drawn. The clothes of the deceased, samples of blood stains and the clothes of the deceased were sent for chemical analysis. The accused was arrested and charged under sections 302 and 452 of the Indian Penal Code.

3. The prosecution examined three witnesses to prove its case against the accused. The first witness examined was the brother of the deceased. PW1 Sunil has stated that the accused was married to their sister, Bhima five years prior to the incident. She was frequently assaulted by the accused and she was therefore, residing with their brother Vilas, the deceased. He has also deposed that the accused had assaulted his brother in law on his head with an iron crowbar on an earlier occasion. The accused was in police custody for about two or three months on account of that incident. After his release, he often threatened to kill PW1 and his family. He has deposed that he was asleep in his field on the night of 21.6.1998. His brother Vilas and the other members of Vilas’s family in the house adjoining to his own. Bhima, PW2, his sister was also staying with Vilas. This witness has stated that one Madhuratan who came to his field, informed him that the accused had assaulted his brother Vilas. When he rushed home he found Vilas with a bleeding injury on his neck. Vilas informed him

that Krishna had attacked him with a sword. In his crossexamination, he has stated that on an earlier occasion, the accused had assaulted his sister Bhima with a sickle. There is no discrepancy or contradiction contained in the complaint lodged by this witness with the police and his deposition in Court.

Bhima, PW2, was living alongwith Vilas when the accused came and attacked him with a sword. She heard Vilas shout that the accused had attacked him and had fled. She has stated that although they chased the accused he threatened to attack them with the sword which was still with him. The deceased, thus, suffered a bleeding injury on his neck. The learned Advocate appearing for the appellant points out that there is a serious omission contained in the Bhimabai's statement recorded by the police as she has not made any mention about Vilas having shouted that he was attacked by the accused. However, this omission in our opinion, is not very material. The witness has stated that she had seen the accused run away from the house, after attacking the deceased.

The evidence of PW3 is not very material as he has only deposed that he informed PW1 that Vilas had sustained an injury. When he returned with PW1 to the house, he saw Vilas lying with an injury on his neck. Vilas soon succumbed to the injuries. He has truthfully stated that he did not know who assaulted Vilas.

4. In our opinion, there can be no doubt that the deceased has suffered a homicidal death. The question would be whether this death has occurred on account of the appellant. The weapon of the assault has not bee seized. However, this would not necessarily be fatal to the case of the prosecution. The evidence of PW2 who is the wife of the accused corroborated by the evidence of the other prosecution witnesses would be sufficient in our opinion, to hold that the accused had committed the crime.

5. The learned Counsel appearing for the appellant argued that the appellant had no motive for committing a crime. In our opinion, this submission cannot be accepted as both PW1 and PW2 have narrated the instances when the accused had attacked members of their family including PW2 for one reason or the other. There is a history of assaults by the accused on the members of the family of PW1 and PW2. This in our opinion, would sufficiently indicate that the accused did have a motive to attack the deceased. The submission of the learned Counsel for the appellant that both PW1 and PW2 were interested witnesses and, therefore, their testimony should be disbelieved is not acceptable. There could have been no independent witness to the incident at the time when the accused attacked the deceased. The incident occurred well past midnight and obviously therefore, there would only be the members of the family

in the house at that point of time. Therefore, this submission also is without merit.

6. Having considered the evidence on record and reappreciated the same, we have no manner of doubt that the judgment and order of the Sessions Judge, Thane must be upheld.

7. Appeal is dismissed.